

REASONS OF DISSENT,

BY DUNCAN MACFARLAN, D.D.,

PRINCIPAL OF GLASGOW COLLEGE,

FROM A RESOLUTION OF FACULTY,

WITH RESPECT TO THE

ADMISSION OF A PROFESSOR OF MEDICINE.

OCTOBER 20, 1841.

IN order that the following argument may be fully understood, it must be born in mind,

That the College of Glasgow, as a subordinate but distinct Corporation, has subsisted from the first institution of the University, and is co-eval with its foundation. Being with the other departments of the University impoverished and nearly extinguished at the Reformation, it was restored and endowed anew by King James VI. in 1577, and this new erection, as it was called, has been confirmed by many subsequent Charters and Acts of Parliament.

During the eighteenth century a variety of disputes arose amongst the members of the College, as to the interpretation of some parts of the constitution, involving particularly the respective powers and duties of the several functionaries and jurisdictions of both the University and College. These were finally settled in 1771 and 1772, by deliberate and unchallenged judgments of the Supreme Civil Courts.

In the latest of these judgments, the judges found and declared—"That all the Professors of the said College are subject to the daily and ordinary inspection and jurisdiction of the Principal of the said College, and that the Principal and all the Professors of the said College, with the advice of the Lord Rector and Dean of Faculty of the said University, have the *sole* right and power of trying every one of the Professors of the said College for negligence of duty, or misbehaviour in other respects, and of inflicting on him or them the pains of suspension, deprivation, or such censure as their negligence or misbehaviour shall deserve."

Their Lordships also found and declared—"That when the office of Principal of Glasgow College, or when any Professorship in the said College in the gift of the King, becomes vacant, it belongs to the Faculty Meeting of the said College, as described in the Statutes of the last Royal Visitation, and not to the Rector and his Assessors, nor to the Comitia, nor to the Senate

of the said University, to give information of said vacancy to His Majesty, that it may be filled up; and that in case His Majesty shall omit to do so, it belongs to the said Faculty Meeting to take the proper steps to fill up the said vacancy, according as law and equity shall direct." It is to be observed that the Faculty Meeting referred to in this last judgment, consists of the Principal and thirteen Professors who, with certain officers, bursars, and servants, constitute the Corporation of Glasgow College. Of the fourteen offices which they hold, eight are filled up by the College itself, and six are in the gift of the Crown, viz., the Principality, and the Professorships of Ecclesiastical History, Anatomy, Medicine, Law and Astronomy. All those Professors, whether nominated by the Crown or the College, are examined by the Faculty Meeting of the College, and if found qualified, admitted by that body to their respective offices according to certain formalities, which admission entitles them to their status and emoluments as Professors in the University and College.

From the date of the judgments above recited, 1772, down to the present year 1841, there had occurred in the offices to which it applies, sixteen vacancies; of these, eleven were caused by death, and five by demission. To three of the former, Assistants and Successors had been appointed some years before the death of the Professors, with the sanction and at the request of the Faculty. The death of each of the other eight, whether Principals or Professors, was on its taking place notified to government without delay, in terms of the said judgment, as appears from the minutes of the several dates. In those cases again where the resignation or demission of a Professor had occurred, the Faculty, with one apparent exception, have reported their acceptance of the demission, and the consequent vacancy, also in terms of the judgment of the Court of Session. This was done on the resignation of Dr. Wight in 1778, when the notification of the vacancy contained an express reference to that judgment. In 1781 Dr. Hamilton, Professor of Anatomy, intimated his purpose of resigning to the Faculty, and obtained their concurrence in an application for the appointment of his son to be his successor. In like manner Dr. Hope demitted the Chair of Medicine in 1795, and Dr. Meikleham that of Astronomy in 1803, both into the hands of the College or Faculty Meeting, who exercised their jurisdiction by accepting the demissions and declaring the offices vacant, and then gave the requisite information of the vacancies to the Secretary of State holding office at the time.

The only apparent deviation from this practice took place in 1799, when Dr. Patrick Wilson, Professor of Astronomy, made an intimation of his intention to resign under particular circumstances. The conditions which he proposed led to a lengthened discussion and protracted correspondence between the higher officers of the University, the Faculty of the College, the advisers of the Crown, and Dr. Wilson, which was terminated by his giving in a resignation to the Secretary of State for the time being, with the previous knowledge and approbation of the Faculty.

Since May 1839, Dr. Charles Badham, who had been Professor of Medicine from 1827, has been absent in the South of Europe on account of the bad health of himself and his family; and the duties of his office have been discharged by an Assistant approved of by the Faculty. Under this arrangement,

understood by all parties to be merely temporary, the Professor continued to draw the whole Salary, Two Hundred and Seventy Pounds, and the Assistant received the whole of the Fees paid by the students attending his Lectures.

On the first of September 1841, there was put into the hands of the Principal by Dr. William Thomson of Edinburgh, a Letter under the sign Manual of Her Majesty, dated on the twenty third of August in the same year, of the following tenor—"Our Sovereign Lady considering that the office of Professor of Medicine in Her University of Glasgow, is now vacant by the resignation of Dr. Charles Badham, late Professor there, and being informed of the abilities and fit qualifications of Her trusty and well beloved William Thomson, Doctor of Medicine, and Member of the Royal College of Physicians, for exercising the said office, ordains a Letter of Presentation to be made and passed under the Privy Seal of that part of Her Majesty's Kingdom of Great Britain called Scotland, nominating and presenting, like as Her Majesty by these presents nominates and presents the said William Thomson to the sole Profession of Medicine, within Her said University of Glasgow, during all the days of his lifetime; giving, granting, and disponing to him the whole Fees, Provisions, Casualties, Profits, Emoluments, Privileges and Immunities whatsoever, due or belonging to the said Profession, or that shall thereafter pertain or belong thereto, with full power to the said William Thomson to uplift and receive the Fees or Salaries settled upon that said Profession, and to use, exercise and discharge the said powers and privileges competent and pertaining to the said office as fully and freely in all respects and conditions as the said Dr. Charles Badham, or any other Professor of Medicine in Her Majesty's said University of Glasgow hath done or ought to have done at any time heretofore; but upon the express condition of his paying out of the Salary Fees and Emoluments appertaining or belonging to the said office the Sum of Three Hundred Pounds per Annum to the said Dr. Charles Badham during his lifetime in consideration of his advanced age and infirmities, and of his being no longer able to discharge the duties of the said office,—requiring hereby the Chancellor, Rector, Principal and Masters of the said University to admit, enter and receive the said William Thomson to the said office and place in the usual manner that the Professors of Medicine are received and admitted there: provided however that whereas the Professor of Medicine in the University of Glasgow has hitherto given Lectures both in the Theory and the Practice of Physic, and it may hereafter be deemed expedient that these branches of Medical science should each be taught by a separate Professor, and the duties of the Professor of Medicine subdivided, nothing herein contained shall in any respect be held to prevent Her Majesty from naming an additional Professor for the teaching either of the Theory or of the Practice of Physic in the University of Glasgow, as to Her Majesty may seem proper. And Her Majesty ordains the said Letters to be farther extended in the most ample form. Given at Her Majesty's Court, at St. James's, the Twenty third day of August, 1841, in the fifth year of her Majesty's Reign, By Her Majesty's command.—(Signed) NORMANBY."

In virtue of the warrant contained in the above Letter, a Commission or Presentation in the usual form, appointing Dr. Thomson to be Professor of Medi-

cine, and embodying the foregoing conditions and reservations, under the Privy Seal for Scotland, was made out and laid before the Meeting of Faculty of the College, on the 11th October, being the earliest day of their Meeting after the summer vacation. On a statement by the Principal that he had felt it his duty to take the opinion of counsel on behalf of the College, as to various points connected with, and affecting the validity of this Commission, the Meeting unanimously approved of the course which he had adopted under the circumstances of the case, and resolved to delay farther proceedings till the opinions thus applied for be received. On the 20th October, the Faculty met and proceeded to deliberate regarding the Commission to Dr. William Thomson, and having had before them the opinions of Messrs. Erskine Douglas Sandford, and George Graham Bell, Advocates, both in favour of the validity of said Commission, it was moved and seconded that the same should be sustained, and the Faculty agreed without a vote to sustain it.

The Principal stated, that notwithstanding the opinion of Counsel, he regarded the appointment in all its circumstances as most injurious to the privileges, discipline, and general interests of the College, and therefore craved leave to enter his dissent from its being received *hoc statu* for reasons to be given in at next meeting of Faculty.

These Reasons he now presents for himself and such of his Colleagues as may agree with him in the view which he has been led to take of this question. It is with regret that he has found himself compelled to adopt this course, but he cannot consistently with what he owes to his own character, to the Corporation, of which he is a member, and to the successors in office of the present Professors, suffer this admission to pass without recording his disapprobation of the manner in which it has taken place, and exonerating himself from the responsibility of contributing to that deep and irreparable injury which to his apprehension it is calculated to inflict on the independence and discipline of the College. He therefore dissents for the following reasons.

I. The appointment of Dr. Thomson to the Professorship of Medicine, as to a vacant chair, is in opposition to the first judgment of the Court of Session above recited, in which is affirmed the daily and ordinary jurisdiction of the Principal and Faculty meeting over all the Professors of the College. Such jurisdiction, whether exercised by the Principal personally, or in conjunction with the meeting in which he presides, is by this appointment set aside, and its exercise rendered impossible. To have any meaning or effect it must extend to the whole conduct of each Professor as a Professor, his entrance into office, his discharge of his official duties, and his being relieved from their responsibility. Here a Professor residing for the time at a distance, is said to have performed a most important public act, without the knowledge of the Principal, and without an opportunity being afforded to any College authority to judge whether his demission be reasonable or unreasonable, admissible or inadmissible, or whether the terms on which it is made to depend, be or be not consistent with the constitution, and compatible with the interests of the body to which he belongs. He is supposed to have taken on himself first to execute a deed of resignation, dissolving of his own authority his connection with his office, and then to have conveyed it privately into the hands of Her Majesty's

Secretary of State for the time being. He, or some one acting for him, presents this document to a public officer of high rank and responsibility, but who has no direct control over him, and no means of knowing whether it be or be not founded on a true statement of facts; whether it do or do not afford a sufficient ground for holding the office to be vacant. No enquiry is made in the quarter where alone information on these points could be obtained. The vacancy is at once assumed as holding out an excuse for the exercise of official patronage. The Professor is at once relieved from all responsibility to his academical superiors. Their jurisdiction over him is abrogated, and yet he is allowed to hold the emoluments which they have provided, without regard to the title which he may by his services have established to retain them, or to the consequences which may attend their being withdrawn from the purposes for which they were provided. Of all these considerations he is constituted the sole judge; a judge too in his own cause; in a question affecting on the one hand his own pecuniary interest, and on the other the various interests of that body to whom he was bound to yield dutiful submission and obedience, and who were allowed no opportunity of being as much as heard in support of the deep interest which they might have in its decision.

II. The procedure in this case is equally destructive of the discipline of the College as administered by the Principal and all the Professors who are found "with the advice of the Rector and Dean of Faculty to have the sole right and power of trying every one of the Professors of the said College for negligence of duty or misbehaviour in other respects, and of inflicting" such punishment or censure as their "negligence or misbehaviour shall deserve." It is clearly impossible that they can exercise this right or discharge the important duty involved in it; that they can try or punish any Professor for misconduct, if he have it in his power to evade their jurisdiction by a private and surreptitious resignation of his office. However deeply he may be implicated in the offences of neglect of duty, violation of the statutes of the University, embezzlement of property, or gross personal immorality, he will have nothing to do but to follow the example now set of demitting his office into the hands, not of his academical superiors, who can judge whether it ought or ought not to be accepted, but of the crown. By following this course he may be enabled not only to retain a large portion of his official emolument, but to encrease its amount, and at the same time set the College authorities at defiance. This College has owned its prosperity and reputation chiefly to the strictness of its discipline, embracing the conduct of Professors as well as Students; but on this element of its welfare such an appointment as the present must inflict a mortal wound. The dissentient desires it to be distinctly understood that he does not impute to Dr. Badham any such delinquency as is above referred to; but he must regard the manner in which the demission of that gentleman appears to have been tendered and received as forming a precedent, the adoption of which will afford encouragement and impunity to the grossest misconduct, and annihilate for all practical purposes, that system of check and controul which is provided by the constitution of the College, and the salutary effects of which have been tested and ascertained by long and ample experience.

III. The assumption that there was an actual vacancy to be filled up on this occasion, virtually abrogates the duty and privilege of the College Faculty to give information to the Sovereign of the occurrence of every vacancy in their body falling to be filled up by the crown. It is not easy to conceive words more express and unambiguous, or more clearly and absolutely exclusive of all private and unauthorized communications of such an event, than those employed by the judges of the Court of Session in the last finding of their judgment above recited. That the College Meeting should possess this privilege exclusively, is a necessary consequence of their jurisdiction over their own members. These can neither be admitted to or removed from their office, nor relieved from its obligations, otherwise than by the authority, and in the regular form prescribed by the laws, and observed in the practice of the Corporation. The same rule holds in regard to other offices bearing an analogy to that in question. In Scotland, and it is presumed to be the same in England, a clergyman may, in many instances, be presented to a benefice by the Crown; but it by no means follows that he may resign his benefice, and far less his Ecclesiastical status, into the hands of the Crown. The Ecclesiastical superior or superiors, by whom he is admitted to his office and benefice can alone relieve him of the one, or deprive him of the other. The interference of the executive government in such a case would not be submitted to for a moment. It is believed that the same rule applies to offices in the English Universities, and it seems difficult to conceive how a difference should exist with regard to those of Scotland; a difference too, standing in direct opposition to the principles of their constitution, and the precedents established by their practice, and appearing to be expressly negatived by the law of the land, as laid down in the judgment already referred to of the supreme Civil Court.

IV. The objections hitherto stated, are strengthened, and the character of the transaction terminating in the present appointment exhibited in a more alarming point of view, by the obligation imposed on the new Professor to pay to Dr. Badham three hundred pounds a year during his life time.

In those cases where a Professor has resigned his office into the hands of the governing body of the College for reasons which appeared to them satisfactory, it has been usual for him to reserve for the period of his life, either the whole of his salary, or such a portion of it as might be considered reasonable, so as to leave an adequate temporary remuneration to his successor. But in no instance has the reservation been known to exceed the amount of his fixed salary, or was a stipulation for the payment of such excess introduced into an appointment flowing from the Crown. The salary of the Professor of Medicine is two hundred and seventy Pounds, per annum; of this sum only fifty Pounds arise from a provision made and appropriated to the Chair by the Crown, and the remaining two hundred and twenty are paid out of the general funds of the College. Should these funds undergo any considerable diminution, which is by no means improbable, a proportionate deduction must be made from the salaries of all the College Professors, and from this amongst the rest; and yet Dr. Thomson is taken bound to pay his predecessor three hundred pounds a year during his natural life, from whatever source he may be able to procure the necessary funds. It is easy to imagine that such a trans-

saction might take place privately and secretly between individuals, the one willing to retire from his duties, and yet retain his emoluments, and the other desirous to possess the name and status of a Professor, even at a large pecuniary sacrifice; but it may be safely affirmed that no such arrangement was ever before avowed publicly; far less can it be found sanctioned, and even solemnly ratified by the Government of the country. It amounts to this, that Dr. Badham has been permitted to dispose of his Professorship for a large and valuable consideration; and that the security of Government has been given for the fulfilment of his successor's part in this novel and unprecedented contract. Since such a proceeding can be made effectual, there seems to be no reason why the Principal or any Professor having the good fortune to hold a Chair in the gift of the Crown, should be prevented from retiring in like manner, retaining not only his full salary, but a handsome addition to its amount, and betaking himself to any profitable employment of which he may be capable. All that is necessary in order to effect this purpose, is to find a professional gentleman willing to make an ample sacrifice to secure the reversion of the office, and an administration so accommodating, or so intent on patronage as to ratify the agreement, and sanction it by interposing their guarantee for the extra payment.

V. The reservation of power to the Crown to subdivide the duties of the Professor of Medicine, is either destitute of meaning, or a direct infringement of the constitution of the College. If it is understood merely to assert the power of the Sovereign to institute a new Professorship in the University for instruction in any branch of medical science, such assertion seems altogether superfluous and nugatory. That power has been exercised without challenge on the creation of each new chair in the Medical Faculty, since the beginning of this century, and particularly in the foundation of the Professorship of the Institutes of Medicine only two years ago; a fact which seems to have been overlooked or forgotten in drawing up the present commission. If on the other hand the reservation be construed into the claim of a right to interfere with the Professor of Medicine in the discharge of his duties, the dissentient must be permitted to hold it utterly invalid and incompetent. He would refer to the declaration of the Faculty at the reception of Dr. Badham's commission on the 29th September, 1827, (from which commission the document now presented seems to be copied with perfect and unmeaning accuracy) when they found it incumbent "on them to declare that the reservation, now introduced for the first time, of power to His Majesty to name an additional Professor of Medicine in this University is not understood by them to imply a claim on the part of the Crown to the power of altering the constitution of this College as a corporate body, or introducing any change which shall affect the rights and privileges of the present members of Faculty of the College, and particularly of Dr. Badham when admitted as successor to Dr. Freer in the office of Professor of Medicine, and of their and his successors in their respective offices." To this declaration the dissentient desires to adhere, protesting most distinctly and solemnly that nothing contained in Her Majesty's commission to Dr. William Thomson, or done in consequence of its being received and sustained, shall interfere with the right and duty of the Faculty to

judge solely and exclusively of the field of labour assigned to each member of their body, and of the manner and extent in and to which it is to be performed. Without this power he is satisfied that no controul can be exercised, no discipline enforced, and no restriction imposed on the conduct of any class, but that the salutary bond of union under which the College has been prosperous so long, must be completely and for ever dissolved.

The Dissentient requests, in order to guard as far as in his power against a repetition of such occurrences as have taken place on this occasion, that these reasons shall be entered on the record of the Faculty.

(Signed) D. MACFARLAN.

GLASGOW COLLEGE, }
27th October, 1841. }

Dr. Hill, Dr. Jeffray, Mr. Buchanan, and Dr. Gray desired that their concurrence in the foregoing reasons of Dissent should be recorded in the Minutes of Faculty.